

THE STATE OF NEW HAMPSHIRE

MERRIMACK, SS

SUPERIOR COURT

Docket No. 08-E-0053

**In the Matter of the Liquidation of
Noble Trust Company**

**AFFIDAVIT OF ROBERT A. FLEURY IN
SUPPORT OF JOINT MOTION FOR APPROVAL OF
SETTLEMENT WITH SWEENEY ENTITIES**

I, Robert A. Fleury, hereby depose and say:

1. I am the former Deputy Bank Commissioner for the State of New Hampshire and former liquidator of Noble Trust Company ("Noble Trust"). I have been retained as Special Deputy Liquidator by Glenn A. Perlow, Bank Commissioner for the State of New Hampshire, in his capacity as liquidator (the "Liquidator") of Noble Trust. I am involved in and have oversight of the liquidation of Noble Trust. I have familiarity with the books and records of Noble Trust and have participated in numerous meetings associated with the matters set forth herein.

2. I submit this affidavit in support of the Joint Motion for Approval of Settlement with Sweeney Entities (the "Motion"). As set forth more fully in the Motion, the Liquidator has entered into a Settlement and Release Agreement by and between the Liquidator and The Sweeney Charitable Trust, the Gene Sweeney Trust dated June 18, 2010, the Estates of Gene and Marge Sweeney, Leonard Blanton, individually and as Trustee for The Sweeney Charitable Trust and the Gene Sweeney Trust, and the beneficiaries of said trusts and estates (the "Settling Parties") dated May 6, 2011 (the "Settlement Agreement").

3. Prior to the commencement of the Liquidation Proceeding,¹ Colin P. Lindsey (“Lindsey”) was the president of Noble Trust and chairman of its board of directors. During the course of its business, Noble Trust solicited and received funds from both new and existing clients. Noble Trust’s clients’ funds were maintained as individual management accounts or individual retirement accounts established for the benefit of those clients, or held in charitable trusts for which Noble Trust clients were both the grantors and beneficiaries during their lives.

4. Between June 2004 and September 2007, Noble Trust (acting as a trustee under its clients’ trusts) invested approximately \$15 million in an entity known as Sierra Factoring, LLC (“Sierra”). As early as 2005, Sierra had some difficulty meeting its requisite interest payments or redeeming principal, causing it sometimes to use new Noble Trust client money to pay its interest obligations or to redeem principal of other Noble clients. Based upon information available to the Liquidator, the \$15 million investment in Sierra became substantially or entirely worthless, a fact that Lindsey did not disclose to Noble Trust’s clients.

5. Instead, Lindsey attempted to conceal the loss from Noble Trust’s clients and other parties in interest (including the Banking Department) through a fraudulent and illegal Ponzi scheme. In 2006, Sierra stopped paying entirely any monthly “interest” payments to Noble Trust, which had until that time, been paid to Noble Trust clients invested in Sierra. To make the monthly payments its clients were accustomed to, Noble Trust began using, among other sources, money from newer investors to make such payments. Noble Trust also used funds from newer investors to repay older investors’ principal investment in Sierra.

6. The Liquidator is in the process of marshaling the assets of Noble Trust in order to maximize the value of the liquidation of Noble Trust for the benefit of creditors. Among his

¹ Capitalized terms used in this Affidavit and not otherwise defined herein are intended to have the same meaning as ascribed to them in the Motion.

other powers, the Liquidator is authorized to assert any claims that may be brought by or on behalf of Noble Trust or Aegean Scotia.

7. The Liquidator commenced litigation in this Court against various former Noble Trust investors, including Cecil and Marge Sweeney and other defendants in Hildreth v. Sweeney et al., Docket No. 10-E-0034 (the “Action”). Pursuant to the Action, the Liquidator alleges certain fraudulent transfer, unjust enrichment, constructive trust and conversion claims against the Defendants who were repaid their investment in Sierra, often at the expense of other newer Noble Trust investors.

8. The Liquidator has reached a settlement with defendants Cecil and Marge Sweeney. The Sweeney Charitable Trust received \$138,079.51 in payments from Noble Trust between October 30, 2006 and January 10, 2007. The Sweeneys have both passed away, so the settlement was reached with the Settling Parties. Under the Settlement Agreement, the Settling Parties have paid a confidential sum to the Liquidator (the “Settlement Funds”), which the Liquidator has agreed to hold in an escrow account pending approval of the Settlement Agreement by this Court in an order that becomes both final and no longer subject to appeal. Upon final Court approval, the Settlement Funds will become part of the liquidation estate to be distributed or used by the Liquidator as appropriate.

9. Pursuant to the Settlement Agreement, the Liquidator and the Settling Parties shall mutually release each other from any and all claims that arise out of or relate in any way to the Action, the claims in the petition or related transactions. Without limiting the generality of the release, the Settling Parties specifically waive any and all claims or proofs of claims (and the right to file or amend any claims or proofs of claims) in the Liquidation Proceeding.

10. The Liquidator and the Settling Parties believe the Settlement Agreement is fair, reasonable and adequate, and is the result of contested litigation and arms-length negotiations between the parties and their counsel. In order to avoid the additional time, expense and resources that continued litigation of the Action against the Sweeneys would undoubtedly consume, and the attendant uncertainty of outcome associated with such litigation, the Liquidator and Settling Parties negotiated the Settlement Agreement, which by its terms does not become effective unless and until it is approved by this Court.

11. The Settlement Agreement maximizes the value of the liquidation of Noble Trust by relieving further costs and potential risk of continued litigation with the Sweeneys, and provides for, among other things, (i) payment of the Settlement Funds, eliminating any collection risk if the Liquidator were compelled to obtain judgments against the Settling Parties, and (ii) release of any and all of the claims in the Liquidation Proceeding that any of the Settling Parties filed or could have filed.

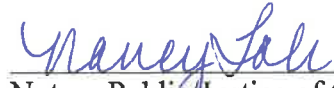
12. The Liquidator therefore believes that the Settlement Agreement is fair and reasonable and that entering into the Settlement Agreement is an appropriate and prudent exercise of the Liquidator's judgment, and that the settlement resolves the pending disputes with the Sweeneys in the Action on terms that are advantageous to the liquidation of Noble Trust and Noble Trust creditors.

Signed under the pains and penalties of perjury this 21st day of February, 2014.


Robert A. Fleury

STATE OF NEW HAMPSHIRE
COUNTY OF Hillsborough

Signed before me on February 21, 2014 by Robert A. Fleury.


Notary Public/Justice of the Peace
My Commission Expires:



CERTIFICATE OF SERVICE

I, Christopher M. Candon, hereby certify that on February 27, 2014, a copy of the foregoing was served by first class mail, postage prepaid on the parties listed below.¹

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¹ Simultaneously herewith, the Liquidator has filed a Certificate of Service that evidences a broader service on claimants and other parties in interest.


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